

An international application which complies with the unity of invention requirements laid down in PCT Rule 13 must be accepted by designated national Patent Offices, since PCT Article 27(1) does not allow any national law to require compliance with requirements relating to the contents of the international application different from or additional to those requirements provided for in the PCT. Thus because the application complied with the unity requirements of the PCT as judged by both the ISA and IPEA, Applicants assert that the Examiner is not correct in changing the unity of invention determination for the national phase.

In the event that the Examiner does not consider the foregoing as providing evidence of common technical features, Applicants also traverse the restriction requirement on the basis that the Examiner has not followed the decision of the Commissioner (now Director), described in MPEP 1850, to examine up to 10 nucleotide sequences concurrently in national phase applications.

MPEP 1850 states in relevant part:

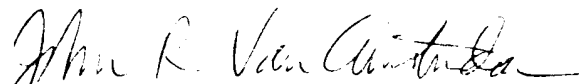
The Commissioner has decided *sua sponte* to partially waive 37 CFR 1.475 and 1.499 *et seq.* to permit applicants to claim up to ten (10) nucleotide sequences that do not have the same or corresponding special technical feature without the payment of an additional fee. The PCT permits inventions that lack unity of invention to be maintained in the same international application for payment of additional fees. Thus, in international applications, for each group for which applicant has paid additional international search and/or preliminary examination fees, the PTO has determined that up to four (4) such additional sequences per group is a reasonable number for examination. Further, claims directed to the selected sequences will be examined with claims drawn to any sequence combinations which have a common technical feature with the selected sequences. Nucleotide sequences encoding the same protein are considered to satisfy the unity of invention standard and will continue to be examined together.

If the MPEP is followed, then at least all of the claims containing nucleotide sequences should be examined.

Finally, Applicants assert that any additional searching required to examine additional claims is not burdensome because the nucleotide and amino acid sequences which form the basis for the claimed invention are so highly related.

Accordingly, Applicants request reconsideration of the restriction requirement for the three reasons set forth above.

Respectfully submitted,



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